

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS: 99-0529**  
**Indiana Gross Retail Tax**  
**For the Years 1996, 1997, and 1998**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Exempt Sales Transactions – Gross Retail Tax.**

**Authority:** IC 6-2.5-2-1(a); IC 6-2.5-2-1(b); IC 6-2.5-5-27; IC 6-2.5-8-8(a); IC 6-8.1-5-1(b); Panhandle Eastern v. Dept. of State Revenue, 741 N.E.2d 816 (Ind. Tax Ct. 2001).

Taxpayer argues that it was not required to collect sales tax on transactions in which the purchaser provided either an exemption certificate or an Interstate Commerce Commission operating number.

**STATEMENT OF FACTS**

Taxpayer is in the business of buying and selling axles. It sells axles to recreational vehicle manufacturers and to companies which convert vans. Taxpayer also sells axles to the public and makes axle repairs for members of the public.

The Department of Revenue conducted an audit review of taxpayer's 1996, 1997, and 1998 business records. The final audit report determined that taxpayer failed to collect sales tax on a number of transactions and assessed taxpayer for those uncollected taxes. Thereafter, taxpayer submitted a protest of the assessment in which it requested "review by the Legal Division." An administrative hearing was conducted during which taxpayer explained that it had obtained tax exemption certificates and Interstate Commerce Commission operating numbers from a number of its customers. This Letter of Findings results.

**DISCUSSION**

**I. Exempt Sales Transactions – Gross Retail Tax.**

Taxpayer argues that it was not required to collect sales tax on transactions for which he customer provided an exemption certificate or the customer provided an Interstate Commerce Commission operating number.

IC 6-2.5-2-1(a) imposes “[a]n excise tax, known as the state gross retail tax . . . on transactions made in Indiana.” Under IC 6-2.5-2-1(b), the retail merchant is required to “collect the tax as agent for the state.”

#### **A. Exemption Certificates.**

Under certain circumstances, the retail merchant is not required to collect sales tax. For example, under IC 6-2.5-8-8(a), “A person . . . who makes a purchase in a transaction which is exempt from the state gross retail tax and use taxes, may issue an exemption certificate to the seller instead of paying the tax.” Once the purchaser provides the exemption certificate, the retail merchant is under no obligation to collect sales tax on the transaction. IC 6-2.5-8-8(a) states that, “A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.”

Taxpayer has provided exemption certificates which purportedly relieve taxpayer from responsibility for collecting sales tax on certain transactions for which the audit review otherwise assessed the tax. The assessments contained in the original audit review report are presumed correct. IC 6-8.1-5-1(b) states that, “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid.” Once the assessment has been made, “The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” Id.

Because taxpayer has belatedly provided exemption certificates relevant to certain of the challenged assessments, taxpayer has met its burden of demonstrating that certain of the original sales tax assessments may be incorrect. Therefore, the audit division is respectfully requested to review the newly submitted exemption certificates and to make whatever adjustments as may be found appropriate.

#### **B. Interstate Commerce Commission Operating Numbers.**

In addition to the exemption certificates, taxpayer has provided “Interstate Commerce Commission operating numbers” for certain of its customers. Taxpayer is of the opinion that evidence of these numbers relieves it of the responsibility for collecting sales tax from the customers which provided the numbers. However, taxpayer has offered no explanation as to how these numbers are relevant in determining whether a particular customer or transaction is exempt from the state’s gross retail tax. Nevertheless, it will be presumed that taxpayer believes possession of the operating number entitles the customer to claim the public transportation exemption.

IC 6-2.5-5-27 provides a specific sales tax exemption specifying that, “Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.” Taxpayer apparently argues that there is a direct corollary between a customer which possesses an Interstate Commerce Commission operating number and a customer which is entitled to make purchases exempt from the state’s gross retail tax. However, taxpayer’s proposition is flawed because there is no blanket public transportation exemption.

In Panhandle Eastern v. Dept. of State Revenue, 741 N.E.2d 816, 819 (Ind. Tax Ct. 2001), the court stated that the “public transportation exemption provided by section 6-2.5-5-27 is an all or nothing exemption.” The tax court interpreted this “all or nothing” language to mean that, “If a taxpayer acquires tangible personal property for predominate use in providing public transportation, then it is entitled to the exemption. If a taxpayer is not predominately engaged in transporting the property of another, it is not entitled to the exemption.” Id. A customer may have an Interstate Commerce Commission operating number but may not be entitled to the sales tax exemption because it is not providing “public” transportation – i.e. it is engaged in transporting its own property – or because the customer is not “predominately” engaged in public transportation. In such cases, the customer falls within the “nothing” category. Under other circumstances, a customer which provides an Interstate Commerce Commission operating number may be entitled to the sales tax exemption because, pursuant to IC 6-2.5-5-27, that particular customer is providing “public” transportation and because it is “predominately” engaged in providing that service. That particular customer falls under the “all” category, and the customer is entitled to make purchases exempt from the state’s gross retail tax.

The Department finds no support for taxpayer’s argument that its customers which have an Interstate Commerce Commission operating number are exempt from sales tax. Absent any indication that a particular customer is predominately engaged in providing public transportation, the operating numbers are irrelevant.

### **FINDING**

Taxpayer’s protest is sustained in part and denied in part. Taxpayer is entitled to a review of the exemption certificates submitted following completion of the audit report. Taxpayer is not entitled to claim an exemption on the basis that a particular customer possesses an Interstate Commerce Commission operating number.